

AN ACT

RELATING TO NOTARIES PUBLIC; ENACTING THE NOTARY PUBLIC ACT;  
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Notary Public Act".

Section 2. DEFINITIONS.--As used in the Notary Public Act:

A. "acknowledgment" means a notarial act in which a person at a single time and place:

(1) appears in person before the notary public and presents a document;

(2) is personally known to the notary public or identified by the notary public through satisfactory evidence; and

(3) indicates to the notary public that the signature on the document was voluntarily affixed by the person for the purposes stated within the document and, if applicable, that the person had due authority to sign in a particular representative capacity;

B. "affirmation" means a notarial act that is legally equivalent to an oath and in which a person at a single time and place:

(1) appears in person before the notary public;

(2) is personally known to the notary public or identified by the notary public through satisfactory evidence; and

(3) makes a vow of truthfulness or fidelity on penalty of perjury, based on personal honor and without invoking a deity or using any form of the word

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"swear";

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C. "commission" means both to empower to perform notarial acts and the written evidence of authority to perform those acts;

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D. "copy certification" means a notarial act in which a notary public:

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(1) is presented with a document that is neither a vital record, a public record nor publicly recordable;

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(2) copies or supervises the copying of the document using a photographic or electronic copying process;

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(3) compares the document to the copy; and

(4) determines that the copy is accurate and complete;

E. "credible witness" means an honest, reliable and impartial person who personally knows the person appearing before a notary public and takes an oath or affirmation from the notary to vouch for that person's identity;

F. "jurat" means a notarial act in which a person at a single time and place:

(1) appears in person before the notary public and presents a document;

(2) is personally known to the notary public or identified by the notary public through satisfactory evidence;

(3) signs the document in the presence of the notary public; and

(4) takes an oath or affirmation from the notary public that the person is voluntarily affixing his signature and vouching for the truthfulness or accuracy of the signed document;

G. "notarial act" means any act that a notary public or other person is empowered to perform pursuant to the Notary Public Act or the Uniform Law on Notarial Acts;

H. "notarial certificate" means the part of, or attachment to, a notarized document that is completed by the notary public, bears the notary public's signature and seal and states the facts attested by the notary public in a particular notarization;

I. "notary public" means any person commissioned by the governor to perform official acts pursuant to the Notary Public Act;

J. "oath" means a notarial act that is legally equivalent to an affirmation and in which a person at a single time and place:

(1) appears in person before the notary public;

(2) is personally known to the notary public or identified by the notary public through satisfactory evidence; and

(3) makes a vow of truthfulness or fidelity on penalty of perjury while invoking a deity or using any form of the word "swear";

K. "official misconduct" means:

(1) a notary public's performance of an act prohibited, or failure to perform an act mandated, by the Notary Public Act or by any other law in connection with a notarial act by the notary public; or

(2) a notary public's performance of an official act in a manner found by the governor to be negligent or against the public interest;

L. "personal appearance" means that the principal and the notary public are physically close enough to see, hear, communicate with and give identification documents to each other;

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M. "personally known" means familiarity with a person resulting from interactions with that person over a period of time sufficient to dispel any reasonable uncertainty that the person has the identity claimed;

N. "principal" means:

- (1) a person whose signature is notarized; or
- (2) a person, other than a credible witness, taking an oath or affirmation from the notary public;

O. "satisfactory evidence of identity" means identification of a person based on:

- (1) at least one current document issued by a federal, state or tribal government agency bearing the photographic image of the person's face and signature and a physical description of the person, though a properly stamped passport without a physical description is acceptable; or
- (2) the oath or affirmation of one credible witness unaffected by the document or transaction who is personally known to the notary public and who personally knows the person, or of two credible witnesses unaffected by the document or transaction who each personally knows the person and shows to the notary public documentary identification as described in Paragraph (1) of this subsection; and

P. "seal" means a device, including a rubber stamp, for affixing on a paper document an image containing the notary public's name, the words "State of New Mexico" and, in the case of a rubber stamp, the commission expiration date.

Section 3. QUALIFICATIONS.--A notary public shall:

- A. be a resident of New Mexico;
- B. be at least eighteen years of age;

- C. be able to read and write the English language;
- D. not have pleaded guilty or nolo contendere to a felony or been convicted of a felony; and
- E. not have had a notary public commission revoked during the past five years.

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Section 4. APPLICATION.--An applicant for appointment as a notary public shall submit to the secretary of state:

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- A. an application for appointment on a form prescribed by the secretary of state that includes a statement by the applicant certifying that the applicant is qualified, contains evidence of the applicant's good moral character as shown by signatures of two residents of this state and the oath prescribed by the constitution of New Mexico for state officers;
- B. a bond in the amount of ten thousand dollars (\$10,000) executed by a licensed surety for a term of four years commencing on the commission's effective date and terminating on its expiration date;
- C. an application that is signed by the applicant using the applicant's surname and one given name, plus an initial or additional name if the applicant so desires, or surname and at least two initials; and
- D. an application fee in the amount of twenty dollars (\$20.00).

Section 5. APPOINTMENT --TERM.--Upon receipt of the completed application for appointment and the application fee, and upon approval of the applicant's bond, the secretary of state shall notify the governor, who shall appoint the applicant as a notary public for a term of four years from the date of appointment unless sooner removed by the governor. The secretary of state shall issue a certificate of

appointment to each notary public commissioned by the governor. A certificate of appointment shall not be possessed or used by any other person or surrendered to an employer upon termination of employment.

Section 6. REAPPOINTMENT.--At least thirty days before expiration of each notary public term, the secretary of state shall mail a notice of expiration to the notary public's mailing address of record. A notary public may be reappointed upon making application in the same manner as required for an original application.

Section 7. POWERS AND PROHIBITIONS.--

A. A notary public is empowered to perform the following notarial acts:

- (1) acknowledgments;
- (2) oaths and affirmations;
- (3) jurats;
- (4) copy certifications; and
- (5) any other act so authorized by the law of this state.

B. A notary public shall not perform a notarial act if the principal:

- (1) is not in the notary public's presence at the time of notarization;
- (2) is not personally known to the notary public or identified by the notary public through satisfactory evidence of identity;
- (3) shows a demeanor that causes the notary public to have a compelling doubt about whether the principal knows the consequences of the transaction requiring a notarial act; or
- (4) in the notary public's judgment, is not acting of his own free will.

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C. A notary public may certify the affixation of a signature by mark on a document presented for notarization if:

(1) the mark is affixed in the presence of the notary public and of two credible witnesses unaffected by the document;

(2) both witnesses sign their own names beside the mark;

(3) the notary public writes below the mark: "Mark affixed by (name of signer by mark) in presence of (names of witnesses) and undersigned notary public pursuant to Subsection C of Section 7 of the Notary Public Act"; and

(4) the notary public notarizes the signature by mark through an acknowledgment or jurat.

D. A notary public may sign the name of a person physically unable to sign or make a mark on a document presented for notarization if:

(1) the person directs the notary public to do so in the presence of two credible witnesses unaffected by the document;

(2) the notary public signs the person's name in the presence of the person and the witnesses;

(3) both witnesses sign their own names beside the signature;

(4) the notary public writes below the signature: "Signature affixed by notary public in the presence of (names and addresses of person and two witnesses) pursuant to Subsection D of Section 7 of the Notary Public Act"; and

(5) the notary public notarizes the signature through an acknowledgment or jurat.

Section 8. REFUSAL TO NOTARIZE.--

A. A notary public shall not refuse to perform a notarial act based on a

principal's race, age, gender, sexual orientation, religion, national origin, health or disability or status as a non-client or non-customer of the notary public or the notary public's employer.

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B. A notary public shall perform a notarial act for a person requesting such an act who tenders the appropriate fee, unless:

(1) the notary public knows or has good reason to believe that the notarial act or the associated transaction is unlawful;

(2) the act is prohibited; or

(3) the number of notarial acts requested practicably precludes completion of all acts at once, in which case the notary public shall arrange for later completion of the remaining acts.

Section 9. SURETY BOND AND DUTIES OF SURETY.--

A. A commission shall not be issued until an oath of office and a ten-thousand-dollar (\$10,000) bond have been provided on the application for appointment and approved by the secretary of state. The bond shall be executed by a licensed surety, for a term of four years commencing on the commission's effective date and terminating on its expiration date, with payment of bond funds to any person conditioned upon the notary public's misconduct.

B. A person damaged by an unlawful act, negligence or misconduct of a notary public in his official capacity may bring a civil action on the notary public's official bond.

C. The surety for a notary public bond shall report all claims against the bond to the secretary of state.

D. If a notary public bond has been exhausted by claims paid out by

the surety, the governor shall suspend the notary public's commission until:

(1) a new bond in the amount of ten thousand dollars (\$10,000) is obtained by the notary public; and

(2) the notary public's fitness to serve the remainder of the commission is determined by the governor.

E. In the event of a suspension of a notary public's commission by the governor, the notary public shall not perform any notarial acts until the requirements of Subsection D of this section have been fulfilled and the governor removes the notary public's suspension.

Section 10. AVOIDANCE OF INFLUENCE.--

A. A notary public shall not influence a person either to enter into or avoid a transaction involving a notarial act by the notary public, except that the notary public may advise against a transaction if the notary public knows or has good reason to believe that the notarial act or the associated transaction is unlawful.

B. A notary public has neither the duty nor the authority to investigate, ascertain or attest to the lawfulness, propriety, accuracy or truthfulness of a document or transaction involving a notarial act.

Section 11. FALSE OR INCOMPLETE CERTIFICATE, AUTHENTICATING DOCUMENTS IN ABSENCE OF PRINCIPAL.--

A. If a notary public or any other officer authorized by law to make or give a certificate or other writing makes or delivers as true a certificate or writing containing statements that he knows to be false, or appends his official signature to acknowledgments or other documents when the principals executing the documents have not appeared in person before him, is guilty of a misdemeanor and upon

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conviction shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment for a period not exceeding six months, or both.

B. A notary public shall not affix an official signature or seal on a notarial certificate that is incomplete.

C. A notary public shall not provide or send a signed or sealed notarial certificate to another person with the understanding that it will be completed or attached to a document outside of the notary public's presence.

Section 12. IMPROPER DOCUMENTS.--

A. A notary public shall not notarize a signature:

- (1) on a blank or incomplete document; or
- (2) on a document without notarial certificate wording.

B. A notary public shall neither certify nor authenticate a photograph.

Section 13. INTENT TO DECEIVE.--A notary public shall not perform any official action with the intent to deceive or defraud.

Section 14. TESTIMONIALS.--A notary public shall not use the official notary public title or seal to endorse, promote, denounce or oppose any product, service, contest, candidate or other offering.

Section 15. UNAUTHORIZED PRACTICE OF LAW.--

A. If notarial certificate wording is not provided or indicated for a document, a non-attorney notary public shall not determine the type of notarial act or certificate to be used.

B. A non-attorney notary public shall not assist another person in drafting, completing, selecting or understanding a document or transaction requiring a notarial act.

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C. This section does not preclude a notary public who is duly qualified, trained or experienced in a particular industry or professional field from selecting, drafting, completing or advising on a document or certificate related to a matter within that industry or field.

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D. A notary public shall not claim to have powers, qualifications, rights or privileges that the office of notary public does not provide, including the power to counsel on immigration matters.

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E. A notary public shall not use the term "notario publico" or any equivalent non-English term in any business card, advertisement, notice or sign.

#### Section 16. FEES.--

A. For performing a notarial act, a notary public may charge the maximum fee specified in this section, charge less than the maximum fee or waive the fee.

B. A notary public shall not discriminate by conditioning the fee for a notarial act on the attributes of the principal.

C. An employer shall not establish fees for notarial services that are in excess of those specified in this section nor on the attributes of the principal as delineated.

D. The maximum fees that may be charged by a notary public for notarial acts are:

(1) for acknowledgments, five dollars (\$5.00) per acknowledgment;

(2) for oaths or affirmations without a signature, five dollars (\$5.00) per person;

(3) for jurats, five dollars (\$5.00) per jurat; and  
(4) for copy certifications, fifty cents (\$.50) per page with a  
minimum total charge of five dollars (\$5.00).

E. A notary public may charge a travel fee not to exceed thirty cents  
 (\$.30) per mile when traveling to perform a notarial act if:

(1) the notary public and the person requesting the notarial act  
 agree upon the travel fee in advance of the travel; and

(2) the notary public explains to the person requesting the  
 notarial act that the travel fee is separate from the notarial fees and not mandated by  
 law.

Section 17. OFFICIAL SIGNATURE.--In notarizing a paper document, a notary  
 public shall:

A. sign by hand on the notarial certificate exactly and only the name  
 indicated on the notary public's seal or stamp;

B. not sign using a facsimile stamp or an electronic or other printing  
 method; and

C. affix the official signature only at the time the notarial act is  
 performed.

Section 18. OFFICIAL SEAL OR STAMP.--

A. A notary public shall keep an official seal or stamp that is the  
 exclusive property of the notary public. The seal or stamp shall not be possessed or  
 used by any other person or surrendered to an employer upon termination of  
 employment.

B. A notarial seal or stamp shall contain the exact name of the notary

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public as it appears on the application for appointment and the words "NOTARY PUBLIC – STATE OF NEW MEXICO" and shall authenticate official acts with the seal or stamp.

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C. Each notary public shall authenticate official acts with a notarial seal or stamp that, if a seal, shall contain the notary public's name and the words "NOTARY PUBLIC – STATE OF NEW MEXICO" and that if a stamp, shall be in substantially the following form:

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"SEAL  
STATE OF  
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Official Seal

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(name of notary public printed)".

D. An impression or image of the seal or stamp shall be affixed only at the time the notarial act is performed.

E. When not in use, the seal or stamp shall be kept secure and accessible only to the notary public.

F. Within ten days after the seal or stamp of a notary public is stolen, lost, damaged or otherwise rendered incapable of affixing a legible impression or image, the notary public, after informing the appropriate law enforcement agency in the case of theft or vandalism, shall notify the secretary of state by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, and also provide a copy of any pertinent police report.

G. As soon as reasonably practicable after resignation, revocation,

change of name, expiration of a commission or death of the notary public, the seal or stamp shall be destroyed or defaced so that it may not be misused.

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Section 19. ENDORSING DATE OF COMMISSION.--Upon performance of any notarial act, the notary public shall, immediately opposite or following the notary public's signature, endorse the date of the expiration of commission. The endorsement may be legibly written, stamped or printed upon the instrument and shall be substantially in the following form:

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"My commission expires (stating date of expiration of commission)".

Section 20. CHANGE OF NAME.--

A. Upon any change of a notary public's name, the notary public shall, within ten days of such change, make application to the secretary of state for issuance of a corrected commission. The application shall be on a form prescribed by the secretary of state and shall contain an impression or image of the new seal or stamp bearing the new name of the notary public exactly as it appears on the application. Upon receipt of the completed application, the secretary of state shall issue a corrected certificate of appointment showing the notary public's new name. The commission on the corrected certificate of appointment expires on the same date as the commission on the certificate of appointment it replaces.

B. The notary public shall notify the surety for the notary public's bond in writing within ten days of a change of name and provide the surety with the new name of the notary public exactly as it was provided to the secretary of state. Within ten days of the notice from the notary public, the surety shall issue a rider to the notary public's bond and distribute a copy of the rider to the notary public and the secretary of state.

Section 21. CHANGE OF ADDRESS.--

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A. A notary public shall notify the secretary of state in writing of a change of the notary public's residence, business or mailing address within ten days after such change.

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B. A notary public shall notify the surety for the notary public's bond in writing within ten days of a change of residence, business or mailing address.

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Section 22. CERTIFICATION.--Upon request, the secretary of state shall certify to a notary public's commission.

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Section 23. RESIGNATION.--

A. A notary public who resigns his commission shall send to the secretary of state by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, a signed notice indicating the effective date of resignation.

B. A notary public who ceases to reside in New Mexico, or who becomes permanently unable to perform notarial duties, shall resign his commission.

Section 24. DISPOSITION OF THE SEAL AND STAMP.--

A. When a notary public commission expires or is resigned or revoked, the notary public shall, as soon as reasonably practicable, destroy or deface all notary seals and stamps so that they may not be misused.

B. If a notary public dies during the term of commission or before fulfilling the requirement stipulated in Subsection A of this section, the notary public's personal representative shall notify the secretary of state of the death in writing and, as soon as reasonably practicable, destroy or deface all notary seals and stamps so that they may not be misused.

Section 25. DISQUALIFIED NOTARY PUBLIC EXERCISING POWERS.--Any notary public who exercises the duties of his office with the knowledge that his commission has expired or that he is otherwise disqualified is guilty of a misdemeanor and upon conviction shall be punished by a fine of five hundred dollars (\$500) and shall be removed from office by the governor.

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Section 26. REMOVAL FROM OFFICE.--

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A. The governor may revoke the commission of any notary public who:

- (1) submits an application for appointment as a notary public that contains a false statement;
- (2) is or has pleaded guilty or nolo contendere to a felony or been convicted of a felony or of a misdemeanor arising out of a notarial act performed by him;
- (3) engages in the unauthorized practice of law;
- (4) ceases to be a New Mexico resident; or
- (5) commits a malfeasance in office.

B. A commission may be revoked pursuant to the provisions of this section only if action is taken subject to the rights of the notary public to notice, hearing, adjudication and appeal.

C. Resignation or expiration of a commission does not terminate or preclude an investigation into the notary public's conduct by the governor or by the attorney general, a district attorney or any law enforcement agency of this state, who may pursue the investigation to a conclusion, whereupon it shall be made a matter of public record whether or not the finding would have been grounds for revocation.

D. In lieu of revocation, the governor may deliver a written official

warning to cease misconduct to any notary public whose actions are judged to be official misconduct.

Section 27. REPEAL.--Sections 14-12-1 through 14-12-20 NMSA 1978 (being Laws 1969, Chapter 168, Sections 1 through 5, Laws 1977, Chapter 106, Section 1, Laws 1969, Chapter 168, Sections 6 through 8, Laws 1909, Chapter 55, Sections 8 through 10, Laws 1969, Chapter 168, Sections 9 through 11, Laws 1909, Chapter 55, Sections 18 and 20 through 22 and Laws 1921, Chapter 82, Section 1, as amended) are repealed.

~~Section~~ Section 28. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.